

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 5658 OF 2004.

Rajesh Jogani. ... Applicant.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Ms. Pallavi Ashar i/b Mr. A.M.Saraogi, advocate for Applicant.

Mrs. Trupti Puranik, advocate for B.M.C.

Mr.A.S.Shitole, APP for State.

**CORAM : V.M.KANADE, J
DATE : MARCH 22, 2005.**

P.C. :

1. Heard the learned counsel for the applicant and the respondent B.M.C. and the learned APP for the State.

2. The applicant is challenging issuance of process by the 42nd Metropolitan Magistrate's Court, Shindewadi, Dadar. The complaint is filed by the B.M.C. under Section 351 r/w 475(A) of the Metropolitan Magistrate's Court Act. It is submitted that an allegation in the complaint that the load bearing wall was removed by the applicant is not mentioned in the show-cause notice nor in the complaint. It is submitted that no permission is

required to be taken for removing the load bearing wall. In support of the said submission, the learned counsel for the applicant has relied on Section 349 of the B.M.C. Act and also the circular which is issued by the Corporation which is annexed at Exh. G to the application. I am unable to accept the said submission submitted by the learned counsel for the applicant. In the first place, the application is filed after lapse of four years. There is gross delay in filing this application. The complaint is filed on 11/8/2000. Process was issued soon thereafter. Matter is now ripe for final hearing and thereafter, present application is filed. On perusal of the circular, as also the provisions relied upon by the applicant, it cannot be said that no permission is required to be taken while demolishing load bearing wall. In any case, all these questions can be decided by the Magistrate after the evidence is adduced by both the parties. All questions raised in this application are kept open.

3. Criminal Application is disposed of in the above terms.

(V.M.KANADE, J)